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ABSTRACT

Some 180 different forms are used by the Securities and Exchange Commission (SEC) to cover the broad range of business activities regulated by the agency. This report examines the forms that are of greatest use to those seeking information about business. These forms are grouped in the following categories: general business information, shareholder identity, public utilities, real estate, oil and gas interests, investment advisers and broker/dealers, investment companies, companies under development, foreign connections, and miscellaneous forms. Ordering information for copies of these documents and SEC summary publications is included. (EL)

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FREEDOM OF INFORMATION CENTER REPORT NO. 408

PUBLIC FILES OF THE SEC

This report was written by Steve Woodward, who recently received an M.A. degree from the University of Missouri School of Journalism. It is the third in a series of reports on access to information from federal agencies, prepared by graduate students in the Washington, D.C., reporting program. Report No. 406 concerned access to NRC records, and Report No. 407 was a guide to the FDA.

Few areas of life have more impact on the American people, and yet get less scrutiny, than business. Everyone, every day, is touched by some aspect of business, be it a bank loan or ground beef from the supermarket. Business is not, as some may think, a monolith of corporations and high finance, inaccessible to, say, the probings of small-town journalists. A vast amount of useful information is as available to the Dubuque **Telegraph-Herald** as it is to the **Wall Street Journal**. The trick is in knowing what is available and how to get it.

How much, for example, is the local utility spending on "image" and then charging the expense to its customers? Who handles the city's investments, and what qualifications does he or she have? How much did the local chain-owned hospital make last year? Does the president of the area's university own a lot of stock in a company the school has decided to invest its endowment in? The answers often can be found in the public files of the Securities and Exchange Commission in Washington, D.C.

The SEC is a federal regulatory agency geared to the disclosure of information about companies that offer shares of stock and bonds for sale to the public. (The generic name for a share of the company's assets is a "security.") To protect investors from fraud and mismanagement, the SEC demands that these companies reveal countless details about their operations: the financial state of the company and smaller companies under its control, the identities and salaries of the people in power, pending lawsuits and much more. The SEC, however, cannot stop the sale of securities that appear to be bad risks if the seller has disclosed all of the appropriate information; only the investor can decide to buy or not.

The agency derives its authority from several laws. The most important of these laws are the Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, Investment Company Act of 1940 and Investment Advisers Act of 1940. Disclosure Inc., a Washington firm whose specialty is selling copies of SEC documents, estimates that under these and other acts nearly 12,000 companies and individuals file 100,000 reports with the SEC each year.

Some 180 different forms are used by the SEC to cover the broad range of business activities regulated by the agency. All of these forms are described briefly in Title 17 (Commodities and Securities Exchanges) of the Code of Federal Regulations, which is available in law, university and large public libraries. The code is a compilation of all regulations used to put federal laws into practice. Another source of general information about the forms is the **Manual of General Record Information**, available from the SEC publications office, Room B-28, 500 N. Capitol St., Washington, D.C. 20549.

This Freedom of Information Center report examines the forms of greatest use to those seeking information about business. These forms are grouped in the following categories: general business information, shareholder identity, public utilities, real estate, oil and gas interests, investment advisers and broker-dealers, investment companies, companies under development, foreign connections and miscellaneous forms.

Information about businesses sometimes can be found in federal agencies other than the SEC. A few of those agencies are the Federal Trade Commission, Occupational Safety and Health Administration, National Labor Relations Board, Department of Housing and Urban Development and Small Business Administration. The **U.S. Government Manual**, which describes each executive branch and independent regulatory agency, provides further details.

General Business Information

For someone wanting to get an idea of what a company does to make its money, the Standard and Poor guides to corporations and executives and the Moody manuals are invaluable. These and the **Who Owns Whom** series — available at almost any reference library — show if a given company is owned by another or if it is the parent of its own set of companies. This is an important distinction, because information about these captive companies often can be found only in reports filed in their parent's name. An example of a captive company — called a "subsidiary" — is Dayton Newspapers Inc. in Ohio, owned by Cox Newspapers in Atlanta, Ga.

The most comprehensive document filed by any company is Form 10-K, which the company's public relations office

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usually will send to a reporter for free. (Ask for an annual report, too.) The 10-K is a confessional for businesses: what they do, how much they make, who runs them, what legal entanglements they are involved in. It is filed annually within 90 days after the end of the fiscal year. A directory of companies required to file these annual reports, listed alphabetically and by industry, is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Say a reporter in Columbia, Mo., has been assigned to cover local hospitals. He knows that Columbia Regional Hospital is operated by Medenco Inc. in Houston, Texas. If he reads Medenco's 10-K, he will learn that the local hospital is one of 32 hospitals and 17 dental laboratories operated by the corporation. He also will learn that Columbia Regional had the second highest operating income among Medenco's hospitals in 1977 and that the company raised its charges to patients to pay for higher minimum wages for nurses. Several stories can be generated from even these few facts. What, for example, makes the local hospital so profitable? Why did Medenco choose to increase patients' bills rather than cut back in another area? How does Medenco's network of medical services differ from that of Humana Corp., the nation's largest hospital chain? Form 10-K will give the reporter a good jump on these stories.

The annual report to the company's shareholders, also filed with the SEC, is generally a skimpy version of the 10-K. The annual report, however, may contain information not included in the 10-K, such as the company's analysis of the prospects for certain lines of business. Medenco's 1977 annual report, for example, reveals that a local doctor is one of four physicians who sit on the 16-man board of directors, a fact not recorded in the 10-K.

Another value of annual reports is that they often contain pictures of directors and top officers. One Washington journalist used such pictures to help determine how many women and blacks sat on boards of directors of the nation's largest newspaper chains.

Several documents complement the 10-K's basic information. Form 8-K is filed within 15 days after any significant change in a company's operation or finances. These changes include a shift in who controls the company, bankruptcy and the hiring of new auditors. When new auditors are hired, it sometimes means that the previous auditors were fired or quit in protest over dubious accounting practices of the company. It may be that important funds were mismanaged.

Similar to the 8-K is Form 10-C, filed by firms selling their stock "over the counter" (not on any stock exchange).

Form 10-Q is an updated financial report, filed within 45 days after the close of a fiscal quarter. The 10-Q, unlike the 10-K, is not audited before filing, which means no guarantee exists that the company followed generally accepted accounting practices in preparing the figures. In other words, one must be wary of the 10-Q's information, which may have been exaggerated or downplayed through accounting tricks.

Two documents of additional value are the proxy statement and the prospectus. The proxy statement — a detailed meeting notice to stockholders — is useful mainly because it discloses the salaries of directors and top officers who make more than $40,000 a year. The statement also outlines matters to be voted upon at the company's annual meeting, such as the election of new officers or the sale of large quantities of securities.

The prospectus is a detailed catalog of a company's main features, filed when the company is about to put a lot of new stock up for sale. The document aids the investor in making a wise investment decision; it aids the journalist because it turns the company inside out for merciless scrutiny. The company must tell potential buyers of its stock about the state of its operation and finances, properties it owns, captive companies under its control and how it intends to use the money gained through the stock sale. The journalist can gauge a company's progress by comparing its goals as stated in the prospectus with later actual performance.

A company's early financial history is available on Form 10. This form, filed in place of a 10-K during the first two years of a business, provides the 10-K's basic information in addition to details about the company's predecessors.

The above forms, in combination, may serve to build a profile of a company and the people who manage it. A comparison of reports from different years or reports from similar companies may reveal significant patterns.

Shareholder Identity

An Iowa scrap dealer named Ben Schwartz has quietly bought up, since 1974, more than $6 million worth of stock in Banks of Iowa, a parent company that controls several banks. Schwartz "did it surreptitiously, in a paper jungle created by his lawyers," Richard Gibson of the Des Moines **Register** wrote (New York **Times**, 4-1-79).

Gibson penetrated the paper jungle by studying a number of SEC forms, one of which — Schedule 13D — brought Schwartz's Banks of Iowa dealings into the daylight. Schedule 13D (or the short form, Schedule 13G) must be filed by an individual or a company that buys enough stock to own more than five percent of a company. The forms describe the amount of stock bought, date of the purchase and the source of the buyer's money (bank or personal funds, for example).

Some attempts to wrest control of a company are not nearly so quiet as Schwartz's. American Express Company's recent bid to take over McGraw-Hill Inc., for example, got daily coverage in the national press. Such takeover attempts occur when one company — or an individual acting through a company — offers to buy large amounts of another company's stock at a price stockholders may find too good to refuse. When a company makes such an offer (called a "tender offer"), it must file Schedule 14D-1, which is similar to Schedule 13D. The 14D-1 also resembles a prospectus in that it requires detailed disclosure of contracts, management and the purpose of the offer.

It is also possible to find out who owns a lot of a company's original stock. Form 3, filed when a company is first formed, requires such a disclosure by directors, officers and anyone who owns more than 10 percent of any kind of the company's stock. Whoever files Form 3 must also file Form 4 each time any part of his original stock changes hands. An entry on Form 4 will say whether the change was the result of a sale or a gift.

Holders of small, as well as large, amounts of stock can sometimes be identified. Say an investor owns shares of a company that does not offer its stock for sale to the public. If that investor wishes to sell small amounts of that stock to the public, he must file Form 144. This form describes the extent of his holdings, his relationship to the company issuing the stock and the name of the person he got the stock from in the first place. If the stock was a gift, he must say so.

The question of gifts, addressed in Forms 4 and 144, is an important one. Gifts can signal ties between persons previously thought to be unconnected. An analysis of the purpose and timing of gifts may reveal important events

occurring out of public view.

Public Utility Holding Companies

Citizens widely perceive public gas and electric utility companies as villains. Certain filings with the SEC may help someone decide for himself whether this is true. Extremely revealing reports must be filed by the nation's 17 or so public utility holding companies. These holding companies have only one job — to hold stock in companies that actually do the work in providing gas and electric services.

At the time the Public Utility Holding Company Act became law in 1935, about 15 holding company systems had a stranglehold on nearly every watt of electricity and every cubic foot of gas that reached the American consumer. The law broke up the systems. Today, privately owned utilities outnumber the holding companies five to one, but the latter still control 20 percent of the nation's electricity production. (Although the privately owned utilities do not file the detailed reports of the holding companies, they may file 10-K and other SEC forms.) Moody's Public Utilities Manual and the latest annual report of the SEC (available from the U.S. Government Printing Office) can help in a determination of whether a given utility company is part of a holding company system.

A major document for investigating utilities is Form U-13-60, the holding company's annual report. It is similar to the corporate 10-K in that it seeks a comprehensive description of the company's operation and finances. But there is much more.

Say, for example, that an electric power company has been drawing heavy criticism for a series of expensive "image" commercials on television, which consumers think they ultimately will be billed for. How much does the company generally spend on advertising? The answer is to some extent available on Form U-13-60 — if the company is part of a holding company system. This form categorizes the holding company's public relations efforts and lists who got paid for advertising and how much. The details on U-13-60 are fascinating and explicit: who got how much in political contributions, who the company's creditors are, dues paid for memberships in associations, a department-by-department analysis of salaries, and how much the company paid out to lawyers, auditors and engineers.

Form U5S is another annual report. It describes pending lawsuits, relationships among the parent's captive companies and the principal shareholders (down to those who own as little as one percent of the company's stock, in some cases).

Whenever a company that owns a lot of stock in the holding company — or vice versa — agrees to do work for the holding company, it must file Form U-13E-1. This form divulges salaries of the working company's management and names its directors, officers, customer companies and 20 largest shareholders. The supplement to this form, Form N-13E-1, sheds light on potential conflicts of interest and gives the cost and length of contracts with the holding company.

Another kind of working company must file Form U-13-1, which also covers agreements to do work for the holding company. This kind of company (called a "mutual service company") looks after financing, engineering and accounting for the system's captive companies and is itself owned by the parent holding company. This arrangement of companies, though confusing, is supposed to hold down the costs of operating the system. Information requested on Form U-13-1 is geared to determining whether the mutual service company can do its job "at a reasonable saving" over a similar company outside the system.

Someone who is not numbed by column after column of figures may be able to spot unusual costs in the contract agreements outlined by forms U-13-1 and U-13E-1. Or perhaps the figures can be used to estimate what other utilities not required to file these forms may be spending for certain services.

How much do holding companies spend on meetings with federal officials, including congressmen and senators? The answer can occasionally be found on Form U-12 (I)-A, filed within 10 days of any such meeting. Itemized on the form are expenses connected with the meeting that appear to be out of the ordinary (the "ordinary," according to the form, are such expenses as travel, telephone and stenographers). An annual report on the holding company's meetings can be found on Form U-12(I)-B.

Some holding companies escape SEC regulation because they operate within a single state. The only way they can avoid regulation, however, is by filing Form U-3A-2, which contains information designed to show all the reasons they do not fall under the provisions of the Public Utility Holding Company Act. This information includes how much the company makes, what property it owns, where its plants and equipment are located, and how much gas and electricity it sells.

Another kind of holding company not subject to most SEC rules is any bank that holds public utility stock primarily as collateral for loans. This company must file Form U-3A3-1 as the price for regulatory freedom. What the banks must divulge is the amount of stock they own in public utilities and whether their directors have any conflicts of interest.

The usefulness of the holding company forms cannot be overstated, considering the pervasive sway utilities hold over American communities. A reporter willing to dig out information can help consumers understand how and why utilities do the things they do and what the consequences are for consumers. Is another rate hike justified? How is the utility company working to hold down costs? Who benefits from each action of the company? Who loses?

Faint stirrings of answers may be logged on SEC forms, even for those companies that do not file the above documents. For if certain problems and trends become apparent in working companies in a holding company system, the same problems and trends may be present in other working companies.

Real Estate

Combining information from local land records with SEC documents filed by certain real estate firms may yield significant results. A reporter covering the local zoning commission, for example, may find that land just approved for lucrative commercial development had been bought for a low price several months before by a firm that specializes in real estate investments. The reporter smells a rat. But where does he turn for more information?

Two basically similar forms may provide all the details he needs. Companies that invest in real estate generally file Form S-11 when seeking SEC approval to offer shares of their stock for sale to the public. This form describes the location and financing of the company's real estate holdings, contemplated rent control programs, identities of tenants renting the most space in certain buildings, and any risks connected with the properties that investors should be aware of. And the S-11 gives the names and salaries of directors and

top officers.

The second form of most use is the company's prospectus, the basic features of which were discussed earlier in this report. Each company that files an S-11 must later file its prospectus. Real estate firms run by partners, however, file only a prospectus, detailing their last five years' experience in real estate investment.

Thanks to these forms, the hypothetical reporter may have discovered that one of the company's directors is the brother of the zoning commission chairman or that several commission members are major shareholders in the company.

Several other forms call for disclosure of real estate deals. A wide variety of companies that invest large amounts of money on behalf of their shareholders must note any real estate investments they intend to make soon. These disclosures can be found on forms N-8B-1 through N-8B-4, filed each time the company wants to offer a lot of stock for sale to the public.

Some small companies, wanting to drum up $1.5 million or less with a year's worth of stock sales, do not have to undergo the same filing requirements as the bigger companies. But after they sell the stock and spend the money, they must file Form 2-A. This form describes exactly how the money was spent, including any real estate purchases.

Oil and Gas Interests

Does a drilling company's production of oil and gas from wells square with cries of an energy crunch? If explicit enough answers cannot be found on Form 10-K, try Form S-10, filed the last time the company offered large amounts of stock for sale to the public. This form describes a company's oil and gas wells right down to the monthly production records and the prices the company has been getting for its products.

Also, some small companies, such as those just mentioned in the real estate section, must give a "complete" description of any oil and gas businesses they own on Form 1-A.

Investment Advisers and Broker-Dealers

When the dam broke on the crumbling state of finances in New York City and Cleveland, an outraged press and public asked, "How could this have happened?" Clues, if not direct answers, lie in the SEC files. All banks or bank divisions that handle the sale of municipal securities — a kind of loan made by individuals and companies to a city's government — must register with the SEC on Form MSD. The idea of Form MSD is to flush out the salesmen who are not qualified to manage a city's investments.

On Form MSD the bank must divulge the identities of its employees involved in city finances and whether any of them have participated in fraud or faced disciplinary action. In addition, the banks must provide historical information on all those employees, from the last high school attended to their last 10 years' business experience.

Information similar to that contained in MSD is available on stock salesmen (called "broker-dealers") who are members of registered associations (Form BD) and investment advisers (Form ADV). Broker-dealers help transfer securities from one owner to another. Investment advisers stick mainly to giving advice on which securities to buy and sell. Form ADV requires these advisers to disclose the identities of directors, officers, partners and principal shareholders of their advice companies.

Broker-dealers who are not members of the registered association can be sized up on Form SECO-4. This form, filed annually, is similar to Form BD. These broker-dealers, in addition, must file Form U-4, a personnel form that identifies management and persons closely associated with the company. Any of these broker-dealers with foreign dealings must describe their operations on Form SECO-2F.

The broker-dealers who handle large amounts of investments must file detailed reports on their operations and finances each year, quarter and month. But only the annual report, Form X-17A-5, Part III, is available for public inspection. How sound are the finances of the broker-dealers who do business with the major institutions in a community? Do conflicts of interest exist? This massive report can provide many answers, although a financial expert may be needed to unravel the skein of figures.

Investment Companies

Investment companies are a growing force in the business world. More and more investors are entrusting their money to these companies, which in turn plow all that accumulated money into their own investments. There are theoretically two advantages to this system. First, the investment company has the time and talent to seek out companies with the best money-making prospects; the individual often does not. Second, the investment company has the money to place its bets on a wide variety of safe and chancy securities, thus ensuring it will win at least as often as it will lose; the individual seldom has enough money to spread around. Critics of investment companies, however, point out that the companies' track records often are no better than those of individual investors. Because of the uncertainties these companies involve, the SEC requires them to file extensive reports on their operations.

Someone who closely examines these reports may find that investment companies are a good shield for an individual or a company wanting to camouflage ownership in certain companies. The trick is to peel off the layers of ownership one by one. Does the president of the area's university, for example, own a lot of stock in a company the school has decided to invest its endowment in?

First, identify the company's major shareholders. Forms 3 and 4 and schedules 13D or 13G will do that.

Now say that one of those major shareholders is an investment company. Form N-1R, the company's annual report, will identify directors, officers, advisory board members and investment advisers, and the family relationships among them. Perhaps there is a link there.

If not, go to forms 3 and 4 and schedules 13D or 13G filed by the investment company's major shareholders, or Form ADV filed by the investment adviser. And so on, until the missing connection is uncovered or it is clear that no connection exists.

Other forms offer various pieces of information about investment companies. Those investment companies that continually buy back their own stock and offer it for sale again — called "open-end" companies — must file an EDP attachment to Form N-1R. This form lists banks in which deposits are kept and the average monthly balance of those deposits. The names of these banks can provide more leads as to the people who control the company's money.

Companies that file Form N-1R must also file its quarterly version, Form N-1Q. This form brings up to date major changes occurring in the company's property and in who controls the company. The company also must explain any change in accountants.

Investment companies listed with the Small Business administration must provide on their annual report, Form N-5R, substantially the same information as other investment companies do on Form N-1R. But there's more. Form N-5R requires the identification of anyone who owns at least five percent of the kinds of stock that allow him or her to vote at the annual shareholders' meetings. Salaries of directors and top officers also are listed.

Companies Under Development

Newly formed companies generally are risky ventures for investors. Such companies that offer stock for sale to the public intend to gamble with the money. If they win, the investors profit; if they lose, the investors also suffer. To protect investors from undue risks, the SEC requires extensive disclosure from these companies. Perhaps the best information can be found in the prospectus, which was discussed earlier.

Some additional information can be found on Form S-3, for mining corporations, and Form S-2, for all other companies. These forms sometimes will include information about labor contracts and legal agreements not mentioned in the prospectus.

A reporter could use these documents to keep close watch on speculative new businesses in the region. A news story may lie in the difference between what the prospectus offers and what the shareholders actually get later.

Foreign Connections

Many foreign companies sell their stock in American markets. These companies, like American companies regulated by the SEC, must file an annual report. This report, Form 20-K, describes any changes in the company's ownership or in its own captive companies, and it identifies directors and officers.

Another way Americans trade in foreign securities is through American depositary receipts, offered for public sale, usually, by several large New York banks. These receipts stand for the stock of foreign companies and are registered on forms C-3, S-12 or 19. Form 19-K is the annual report. These forms indicate who owns the receipts (sometimes called "American certificates") and which foreign companies the receipts stand for.

Because the forms deal with American ownership in foreign companies — and not the other way around — the forms probably would be of little use in researching, say, foreign ownership of U.S. farm land.

But consider another situation. Perhaps a governor is working to convince a foreign company to build a major manufacturing plant in his state. Does he have financial ties to the company? A check on his holdings in American depositary receipts may provide some clues.

Other Documents

Corporate bribes, laundered funds, payoffs to foreign governments — it's a familiar litany nowadays. Recently, documents about questionable payments by companies, seized by SEC investigators, have been made public under the Freedom of Information Act. If anyone wants to examine those documents for a particular company — and he or she is reasonably sure that that company has been investigated by the SEC — he or she may request copies just as though the documents were standard SEC forms. No Freedom of Information request is necessary.

If a reporter hears a rumor that stock certificates (pieces of paper showing ownership of stock) are mysteriously missing from the local bank's vault and the bank people will not talk, how can the reporter verify the story? If the rumor is true, the bank must file Form X-17F-1A, a report on missing, lost, stolen and counterfeit securities. Information on the form includes the date of discovery and the quantity and value of the securities.

SEC Publications

The **SEC News Digest** is a valuable daily summary of important filings and actions taken against various companies by the SEC. The **Digest** each day lists the companies that are preparing to offer their stock for sale to the public, and the individuals who have just bought large amounts of stock in various companies. The **Digest** includes news items about companies that have violated SEC regulations. The SEC's public affairs office generally will distribute the **Digest** free to journalists who have great use for it.

The **Official Summary**, a monthly publication, gives brief descriptions of the buying and selling of securities by "insiders" — directors, officers and major shareholders. The **Summary** makes it easy to spot unusually active trading of stock. The subscription price is $50 a year, and it is available from the Government Printing Office.

The **Statistical Bulletin** provides monthly data, in tabular form, on new batches of stock for sale, volume and value of trading on the stock exchanges, and filings of forms 8-K and 144. The subscription price is $15 a year, and it is available from the Government Printing Office.

The **SEC Docket** is a weekly compilation of new rules, changes in old rules and action taken against various companies in violation of regulations. The subscription price is $79 a year, and it is available from the Government Printing Office.

Miscellaneous Information

Requests for copies of documents mentioned in this guide should be addressed to SEC's Public Reference Section, 500 N. Capitol St., Washington, D.C. 20549. The price for copies is 10 cents a page, with a minimum order of $3.50.

Freedom of Information requests should be addressed to SEC's FOIA officer, Roderic Woodson, Office of Reports and Information Services, 500 N. Capitol St., Washington, D.C. 20549.